

LABOR SERVICES DIVISION[875]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 89A.3, the Elevator Safety Board hereby gives Notice of Intended Action to amend Chapter 66, “Waivers and Variances from Administrative Rules by the Elevator Safety Board,” Chapter 68, “Declaratory Orders by the Elevator Safety Board,” Chapter 69, “Contested Cases Before the Elevator Safety Board,” Chapter 71, “Administration of the Conveyance Safety Program,” Chapter 72, “Conveyances Installed On or After January 1, 1975,” and Chapter 73, “Conveyances Installed Prior to January 1, 1975,” Iowa Administrative Code.

Iowa Code subsection 89A.13(7) requires that every three years the Elevator Safety Board conduct a comprehensive review of existing rules, regulations, and standards. Most of these amendments are a direct result of the review process conducted by the Board during 2011.

These amendments propose to make editorial and technical changes; amend rules to conform to statutory authority; adopt by reference the most recent editions of the relevant American Society of Mechanical Engineers (ASME) codes, except for one narrow requirement concerning telephone lines; mandate the use of an acceptance checklist for installation of new conveyances; and adopt requirements for remote manipulation of conveyances.

The purposes of these amendments are to protect the health and safety of the public, make the rules more clear, align the language with the authority of Iowa Code chapters 17A and 89A, facilitate installation of new technologies in Iowa, and implement legislative intent.

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on March 13, 2012, a public hearing will be held on March 14, 2012, at 9 a.m. in the Capitol View Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)242-5869 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than March 14, 2012, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.iowa.gov.

No variance procedures are included in these rules. Applicable variance procedures are set forth in 875—Chapter 66.

After analysis and review of this rule making, no adverse impact on jobs is expected. This rule making is designed to reduce costs for elevator installation companies and state inspectors. Further, this rule making is designed to expedite the elevator installation process for businesses. Lastly, this rule making does require a mechanic on site for off-site manipulation. The proposed language is narrowly tailored to ensure safety without adding unnecessary costs or burdens on the business sector.

These amendments are intended to implement Iowa Code chapter 89A.

The following amendments are proposed.

ITEM 1. Amend subrule 66.10(6) as follows:

66.10(6) *Time period of waiver.* A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be ~~impractical~~ impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for a waiver continue to exist.

ITEM 2. Amend paragraph **68.1(1)“b”** as follows:

b. A citation and the relevant language of the specific statutes, rules, ~~policies, decisions,~~ or orders whose applicability is questioned, and any other relevant law.

ITEM 3. Amend rule 875—69.2(17A,89A) as follows:

875—69.2(17A,89A) Appeal to the board. ~~A decision by the commissioner to deny, suspend, or revoke an operating permit; a decision by the commissioner to deny a petition for reconsideration; and a deemed denial of a petition for reconsideration are subject to appeal to the board. At a minimum, an appeal shall include a short and concise statement of the basis for the appeal. The required form for an appeal to the board is available on the board’s Web site at <http://www.iowaworkforce.org/labor/elevatorboard.htm>. An appeal to the board shall be a contested case proceeding subject to the provisions of Iowa Code chapter 17A. The commissioner shall have an automatic right of intervention in any appeal and shall defend the ruling in a contested case proceeding. The deadlines for filing an appeal are set forth below:~~

69.2(1) A decision by the commissioner to deny, suspend, or revoke an operating permit; a deemed denial of a petition for reconsideration; and the commissioner’s ruling on a petition for reconsideration are subject to appeal to the board.

69.2(2) An appeal to the board shall be a contested case proceeding subject to the provisions of Iowa Code chapter 17A.

69.2(3) The commissioner shall have an automatic right of intervention in any appeal and shall defend the ruling in a contested case proceeding.

69.2(4) Only those issues raised by the petitioner in the petition for reconsideration will be preserved for appeal to the board in an appeal from the deemed denial of a petition for reconsideration and an appeal from the commissioner’s ruling on a petition for reconsideration.

69.2(5) At a minimum, an appeal shall include a short and concise statement of the basis for the appeal. The required form for an appeal to the board is available on the board’s Web site at <http://www.iowaworkforce.org/labor/elevatorboard.htm>.

69.2(6) The deadlines for filing an appeal are set forth below:

69.2(1) a. *Reconsideration of an inspection report.* An appeal must be filed in writing with the board within 30 calendar days of the earlier of either the issuance of the commissioner’s written ruling on a petition for reconsideration or the deemed denial of a petition for reconsideration.

69.2(2) b. *Notification of intent to deny, suspend, or revoke an operating permit.* An appeal must be filed in writing with the board within 30 calendar days of the appellant’s receipt of the notification of intent to deny, suspend, or revoke an operating permit.

ITEM 4. Amend subrule 69.3(1) as follows:

69.3(1) In order to preserve the ability of board members to participate in decision making, parties who desire participation in an informal review must therefore waive their right to seek disqualification of a board member based solely on the board member’s participation in the informal review. Parties would not be waiving their right to seek disqualification on any other ground. By electing to participate in informal review, a party accordingly agrees that a participating board member is not disqualified from acting as a presiding officer in a later contested case proceeding. a party who elects an informal review under this rule waives the party’s right to seek disqualification of a board member as a presiding officer in a later contested case proceeding based on the board member’s participation in the informal review. A party who elects informal review retains the right to seek disqualification of board members on any other ground pursuant to subrule 69.14(4).

ITEM 5. Rescind and reserve rule **875—69.6(17A,89A)**.

ITEM 6. Amend rule 875—69.7(17A,89A) as follows:

875—69.7(17A,89A) File transmitted to the board. Within 30 days of the issuance of a notice of hearing, the commissioner shall forward to each board member and all parties of record to the appeal copies of the applicable documents set forth below:

1. Inspection report,

2. Petition for reconsideration with the appellant's attachments,
3. Documents obtained by the commissioner in ruling on the petition for reconsideration,
4. Commissioner's ruling on the petition for reconsideration, and
5. Commissioner's decision denying, suspending, or revoking an operating permit, and
- ~~5.~~ 6. Appeal to the board.

ITEM 7. Amend paragraph **69.9(2)“e”** as follows:

e. Funds are unavailable to pay the costs of an administrative law judge and an ~~interboard~~ intra-agency appeal.

ITEM 8. Amend subrule 69.10(1) as follows:

69.10(1) Service—when required. Except where otherwise provided by law, ~~when a every~~ every document is filed in a contested case proceeding, it shall be served upon each of the parties of record. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16, subsection 2, the party filing a document is responsible for service on all parties.

ITEM 9. Amend paragraph **69.15(1)“c”** as follows:

c. Consolidation would not adversely affect the rights of any ~~of the parties~~ party to those proceedings.

ITEM 10. Amend subrule 69.17(7) as follows:

69.17(7) A person ~~who is~~ aggrieved by a ruling of an administrative law judge ~~and~~ who desires to challenge that ruling must appeal the ruling to the board by serving on the board, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge. If the decision of the administrative law judge to quash or modify the subpoena or to deny the motion to quash or modify the subpoena is appealed to the board, the board may uphold or overturn the decision of the administrative law judge.

ITEM 11. Amend rule 875—69.19(17A,89A) as follows:

875—69.19(17A,89A) Settlements. A contested case may be resolved by informal settlement, and settlements are encouraged. Settlement negotiations may be initiated at any stage of a contested case by any party. ~~The board shall not be involved in negotiation until a written proposed settlement is submitted for approval, unless the parties waive this prohibition.~~ All settlements are subject to approval by a majority of the board. No settlement shall be presented to the board for approval except in final, written form executed by the parties. If the board fails to approve the settlement, the settlement shall be of no force or effect to either party.

ITEM 12. Amend rule 875—69.26(17A,89A) as follows:

875—69.26(17A,89A) Interlocutory appeals. ~~Upon written request of a party or on its own motion, the board may review an interlocutory order of the administrative law judge, such as a ruling on a motion to quash a subpoena or other prehearing motion. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of the interlocutory order at the time of the issuance of a final decision would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the date for compliance with the order or the date of hearing, whichever is earlier.~~

69.26(1) Upon written request of a party or on its own motion, the board may review an interlocutory order of the administrative law judge. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of the interlocutory order at the time of the issuance of a final decision would provide an adequate remedy.

69.26(2) Any request for interlocutory review under this rule must be filed within 14 days of issuance of the challenged order, but no later than the date for compliance with the order or the date of hearing, whichever is earlier.

69.26(3) This rule does not apply to the ruling of an administrative law judge after hearing on a motion to quash or modify a subpoena. The procedures for challenging such a ruling are set forth in subrule 69.17(7).

ITEM 13. Adopt the following **new** definitions of “Acceptance checklist” and “Remote manipulation” in rule **875—71.1(89A)**:

“*Acceptance checklist*” means a checklist available on the Web site of the division of labor services that includes a list of major systems and components of conveyances.

“*Remote manipulation*” means a change in the status of a conveyance or any of the components of a conveyance, including but not limited to its controls, controller, or safety devices, that is accomplished by a person who is not on site with the conveyance. “Remote manipulation” does not include remote monitoring.

ITEM 14. Amend subrule 71.10(1), introductory paragraph, as follows:

71.10(1) Elevators. When any combination of alterations or changes is made that constitutes more than 50 percent of the elevator, the entire elevator shall be brought into compliance with ~~ASME A17.1-2007/CSA B44-07~~ ASME A17.1-2010/CSA B44-07, and it shall be deemed a new elevator.

ITEM 15. Amend subparagraph **71.11(2)“b”(3)** as follows:

(3) ~~After each~~ For a new installation, not less than two business days after a completed acceptance checklist is submitted by the conveyance installation company.

ITEM 16. Amend subparagraph **71.14(1)“b”(3)** as follows:

(3) ~~ASME A17.1-2007/CSA B44-07~~ ASME A17.1-2010/CSA B44-07, Part 8, (except for Rule 8.11.1.1);

ITEM 17. Amend subrule 72.1(7), introductory paragraph, as follows:

72.1(7) For installations ~~on or after~~ between July 23, 2008, and May 8, 2012:

ITEM 18. Adopt the following **new** subrule 72.1(8):

72.1(8) For installations on or after May 9, 2012:

- a. ASME A17.1 shall mean ASME A17.1-2010/CSA B44-10, except for rule 2.27.1.1.6;
- b. ASME A17.7 shall mean ASME A17.7-2007/CSA B44-10;
- c. ASME A18.1 shall mean ASME A18.1 (2003), except Chapters 4, 5, 6, and 7;
- d. ANSI A117.1 shall mean ANSI A117.1 (2003), except for Rule 407.4.6.2.2; and
- e. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (2008).

ITEM 19. Adopt the following **new** subrule 72.13(6):

72.13(6) Remote manipulation.

a. No person shall perform remote manipulation of a conveyance component or safety system unless the following criteria are met:

(1) The software design shall prohibit remote manipulation unless control of the conveyance is transferred to the remote location by an elevator mechanic who is on site with the conveyance.

(2) An elevator mechanic shall be on site with the conveyance and shall remove the conveyance from service prior to remote manipulation.

(3) The elevator mechanic on site with the conveyance shall confirm the conveyance components and safety systems are properly functioning before returning the conveyance to service.

b. The maintenance records provisions of ASME A17.1 shall apply to remote manipulation. In addition to the information required by ASME A17.1, the maintenance records for remote manipulation shall include the name of the elevator mechanic who was on site with the conveyance and performed the steps outlined in 72.13(6)“a”(1) to (3).

ITEM 20. Adopt the following **new** subrule 73.8(7):

73.8(7) Remote manipulation.

a. No person shall perform remote manipulation of a conveyance component or safety system unless the following criteria are met:

- (1) The software design shall prohibit remote manipulation unless control of the conveyance is transferred to the remote location by an elevator mechanic who is on site with the conveyance.
- (2) An elevator mechanic shall be on site with the conveyance and shall remove the conveyance from service prior to remote manipulation.
- (3) The elevator mechanic on site with the conveyance shall confirm the conveyance components and safety systems are properly functioning before returning the conveyance to service.
 - b.* The maintenance records provisions of ASME A17.1 shall apply to remote manipulation. In addition to the information required by ASME A17.1, the maintenance records for remote manipulation shall include the name of the elevator mechanic who was on site with the conveyance and performed the steps outlined in 73.8(7) “a”(1) to (3).